THE ANNEXATION OF WEST FLORIDA TO ALABAMA

BY

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OF THE MONTGOMERY BAR.

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The part of Alabama lying north of the thirty-first degree of north latitude was ceded by Georgia to the United States, and became a part of Mississippi Territory in 1802. In the cession it is described as all of the lands to which Georgia has any claim within the United States south of the State of Tennessee and west of a line "beginning on the western bank of the Chattahoochee River, where the same crossed the boundary line between the United States and Spain, running thence up the said river," etc. The part of Alabama lying south of the thirty-first degree and the part of Florida south of this line, between the Apalachicola and Chattahoochee rivers on the east, and the Perdido river on the west, are within what was formerly known as "West Florida." The portion of West Florida lying west of the Perdido River was added to Mississippi Territory by an act of Congress in 1812 and was included in Alabama Territory, when it was established, in 1817. But Spain did not finally give up all claim to it until 1819.

In the Constitution of 1819, and in every Constitution of this State since that time, following the territorial act of 1817, the boundaries of Alabama are described as "beginning at the point where the 31st degree of north latitude crosses the Perdido River; thence east

to the western boundary line of the State of Georgia; thence along said line to the southern boundary of the State of Tennessee"; thence along the boundaries of the States of Tennessee and Mississippi to the Gulf of Mexico; "thence eastwardly, including all islands within six leagues of the shore, to the Perdido River; thence up the said river to the beginning."

The portion of original West Florida which became a part of the State of Florida has always been popularly called *West Florida*. It contains a little more than ten thousand square miles of land and constitutes about one-fifth of the State of Florida; has about one hundred and eighty miles of sea coast and four harbors; and is divided into eight counties—Calhoun, Escambia, Franklin, Jackson, Washington, Holmes, Santa Rosa, and Walton—the first five, curiously, bearing the same names as counties in Alabama.

Florida was admitted into the Union in 1845, and before and ever since the admission, West Florida has been coveted by Alabama, and has had within it many citizens who favored its annexation to this State.

In 1811 the inhabitants of West Florida petitioned Congress to be incorporated into Mississippi Territory. The Constitutional Convention of 1819 in this State memorialized Congress to embrace all of west Florida in the State of Alabama.

In the Constitution of 1819 the preamble defines the boundaries of this State and then adds "subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them." Art. VI, Sec. 17, provides that "in all cases of ceded territory acquired by the State" the General Assembly may arrange the boundaries of counties, and Art. VI, Sec. 22, that "in the event of the annexa-

tion of any foreign territory to this State, by a cession from the United States, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession, anything in this Constitution to the contrary notwithstanding." Each of the subsequent Constitutions of 1861, 1865, 1868 and 1875 contains the same provision as the Constitution of 1819 as to extending such rights and privileges to acquired territory as is required by the terms of cession, except that it is not limited to cession from the United States, because at the time of their adoption all the territory adjoining Alabama was part of some State. (Constitution of 1861, Art. VI, Sec. 21; of 1865, IV, Sec. 42; of 1868, IV, Sec. 37; of 1875, IV, Sec. 51.) These provisions indicate that our constitution framers have always been alive to the question of annexation.

By a joint resolution of the Legislature of Alabama, in 1858 (Acts of 1857-8, p. 432), Alabama proposed to Florida that it cede to this State "all that portion of Florida lying west of the Chattahoochee and Apalachicola Rivers;" and, under it, Governor Moore appointed Judge G. T. Yelverton, of Coffee County, as commissioner, to procure the cession. But Florida refused to agree to any transfer.

There were, doubtless, between 1819 and 1858, other attempts to secure annexation, but none of them attained enough prominence to be worthy of mention.

After the civil war, however, when public money was freely spent in Alabama, the most serious attempt ever undertaken to bring about annexation occurred, between 1868 and 1873, and it is with this movement that this paper will, for the most part, deal.

In 1889 there was an annexation convention at Chipley, Florida, which was largely attended by the people of West Florida concerned and by some Alabamians; but no steps were taken.

During the past year there has been a revival of the agitation in favor of annexation in Florida, particularly at Pensacola, and there have been interchanges between the two States of visits of delegations of gentlemen interested in the subject. Under an act of the last General Assembly of Alabama (Acts 1900-1, p. 192), Messrs. William L. Martin, Richard C. Jones and Samuel Blackwell have been appointed commissioners on behalf of this State with authority to consummate terms of cession, subject to the ratification of the Legislature and Governor. A resolution on the subject is now pending before our Constitutional Convention, and it is proposed to provide in the new Constitution ample power for the Legislature to authorize an issue of bonds to carry out the contract, if a purchase should be made. But nothing more definite has yet been accomplished

In December, 1868, J. L. Pennington, a Senator from Lee County, introduced into the Legislature of Alabama joint resolutions authorizing and directing the Governor "to negotiate with the State Government of Florida for the annexation to the State of Alabama of that portion of Florida lying west of the Chattahoochee River." These were promptly passed, and in January, 1869, Governor Smith appointed commisioners, who went immediately to Tallahassee and remained until they secured action by the Florida authorities.

The Alabama commissioners were Mr. Pennington, the author of the resolutions, who was a North Carolinian

by birth, who had come to Alabama after the war and become prominent as a republican politician; Charles A. Miller, the then Secretary of State, who had come from Maine subsequent to the war; and Judge A. J. Walker, who had shortly before been ousted from the Supreme Court bench by the reconstruction government.

On their arrival at Tallahassee the commissioners addressed a letter to Governor Reid of Florida, who replied favorably, and submitted their communication to the Legislature with a recommendation that commissioners be appointed to represent Florida in the negotiations. By invitation, Mr. Pennington addressed the Legislature, and on January 26th, joint resolutions, similar to those which had been passed in Alabama, were adopted by the Florida Legislature, directing the Governor to appoint three commissioners who were authorized to go to Montgomery as "the duly accredited agents of this State to negotiate for said transfer."

The arguments used by the Alabama commissioners in favor of annexation were, "the regularity of the geometrical figure which it would give Alabama, and the improvement it would make in the outlines of Florida"; "the homogeneity of tastes, sentiments, and interests between the peoples" of West Florida and Alabama, which was asserted to be much greater than between West Florida and the other parts of that State; and the importance to Alabama of Pensacola as a harbor for, and the advantages which that city would derive from, the development of the coal and iron of central Alabama. Benefit of the Alabama railway endorsement law was also promised. In concluding his address to the Legislature, Mr. Pennington said: "Gentlemen, give us the harbor of Pen-

sacola and we will connect it by rail with our capital and our new system of railroads in ninety days after the transfer shall have been made; and within two years or less we will penetrate our mineral regions, open up a great internal highway from the Gulf to the Northwest, build up a great commercial city of Pensacola, which will confer alike its benefits on your State and our State, and enrich the people we propose to take from you."

Under the resolutions of January 26th, Governor Reid appointed to represent the State of Florida W. C. Purham, C. E. Dike and N. C. Moragne. The Montgomery Advertiser of May 3, 1869, in commenting on an article from the Eufaula News containing strictures upon these gentlemen, says: "The Florida commissioners are Messrs. Dike, Moragne and Purham. Mr. Dike has been a citizen of Florida, and has edited the leading Democratic paper, for many years. Dr. Moragne is a Democrat, a State Senator, a gentleman of property, influence and intelligence. Maj. Purham represents West Florida more particularly, being a citizen of that portion of the State more immediately interested in the negotiations, and is also a member of the Florida State Senate from Jackson County. It is true, he is a new settler in Florida, but his record in the Legislature shows that, although a Republican, he has not been controlled by extreme partisan views."

The Florida commissioners came early in May. On the 19th of that month an agreement of cession was signed. By this agreement Florida ceded West Florida and conveyed all its public lands within that territory to Alabama; provision was made for the transfer of jurisdiction and also for the continuance of local officers

and for local courts. As a consideration, Alabama agreed to pay one million dollars in eight per cent. thirty-year bonds; to pay in money the amount of solvent taxes unpaid in the district at the time of consummation of the agreement; to permit the counties to retain the State taxes for one year thereafter for use in local improvements and construction of public buildings; to confirm the Florida charters of two named railroads; not to grant any other railroad charters in the district for three years, to give the benefit of the Alabama endorsement law to these two roads and to no other road for the period of three years. Lastly, it was provided that the agreement should not be of force until ratified and approved by the States of Alabama and Florida and assented to by Congress.

In transmitting the contract to Governor Smith, the Alabama commissioners expressed the opinion that the price offered was large. The total population was 26,671 in 1867, and the amount of State revenues for that year was only a little more than $31,000; but they said this was set-off by the fact that Alabama would acquire two million acres of public lands estimated to be worth $1.25 per acre. They said in conclusion: "It is scarcely to be conceived that Florida will reject the contract, if she is willing under any circumstances to cede any part of her territory. If she should, from a sentiment of State pride, reject the contract, the subject had better be forever dropped, for we do not conceive that a more favorable opportunity or a fairer or more honorable contract will ever be presented."

Governor Smith promptly approved the contract, though he also thought that "the price agreed to be paid (was) more than the State, under all the circumstances of the case, ought to give."

When the agreement was made public, there was considerable discussion of it in both States. In West Florida the feeling was strongly in favor of carrying it out. In Alabama, the Montgomery Advertiser, while not wholly disapproving, withheld its approval, and looked with suspicion on the movement. The editor of the Hayneville Examiner strongly opposed it, and said: "We are now in daily expectation of the announcement that the sand-bank and gopher region west of the Apalachicola has become part and parcel of the State of Alabama by the payment of some million or so of dollars on the part of the latter. We are to have another debt fastened upon the impoverished people of the State. What possible good can be accomplished by this acquisition has not been told us." He also pointed out that the people of Alabama could use Pensacola as a harbor just as well as if it were part of Alabama. The Eufaula News thought the proposition was a good one, both for Alabama and for West Florida, but thought the negotiators on the part of Florida were mere speculators who did not represent the people of the State, and would themselves personally profit out of the proceeds of sale.

On June 25th Governor Reid issued a proclamation, in accordance with the joint resolutions adopted by the Legislature of Florida, setting forth a copy of the agreement, for an election in the counties composing West Florida, for a vote for or against annexation. The Alabama commissioners participated in the campaign, and Mr. Pennington was specially active in making speeches and distributing printed matter setting forth the advantages of annexation. He spent over a month and travelled more than a thousand miles through the

eight counties by private conveyance during the canvass. The commissioners expended in the campaign four thousand dollars of the money authorized by the original joint resolutions of the Legislature of Alabama to defray the necessary incidental expenses incurred in conducting the negotiations.

The election occurred on November 2, and in seven counties the result was nearly two to one in favor of the project. The total number of votes cast was 1,823, of which 1,162 were *for* and 661 *against* annexation. No election was held in Jackson County, where the feeling was strongly favorable.

When the Alabama Legislature convened on the 15th of November, Governor Smith sent them the agreement of May 19th, and informed them that he would approve favorable action on it. Later, he officially informed them of the result of the election.

In January, 1870, a joint resolution was introduced into the Alabama Legislature ratifying and confirming the agreement, and requesting the Representatives and instructing the Senators in Congress to secure the assent of Congress thereto. Some opposition was developed, but the committee to whom the whole matter was referred reported favorably a bill for annexation, saying that they were "satisfied that among the measures proposed for the advancement of the interests of our State, none exceeds in importance, or is calculated to confer greater or more substantial benefits upon Alabama than the acquisition of this territory." In the latter part of February, however, action was postponed until the next session, upon the assigned grounds that the Legislature of Florida had adjourned and would not convene again until January, 1871, and that the postponement would

give the people of Alabama time to consider the bill and instruct their Senators and Representatives how to vote upon it.

It is not improbable that the postponement of the consideration of the bill was due to an investigation that was instituted at that session of the Legislature into the expenditures made by the commissioners, which amounted in 1869 to $10,590. The original resolution had placed no limit upon the commissioners, and had directed the Auditor, upon the order of the Governor, to draw his warrant upon the Treasurer out of any money not otherwise appropriated, "to defray necessary incidental expenses incurred in conducting this negotiation." On January 12th, just before the commissioners left for Tallahassee, they drew $500 each. This, they stated in writing, at the request of the special committee of the Legislature conducting the investigation for an explanation, they expended in personal expenses at Tallahassee and in Montgomery. On the 17th of May, 1869, just two days before the agreement was consummated, they drew $5,000. Mr. Pennington says they entertained the Florida commissioners. Two of them were in Montgomery less than two weeks, and the third only a month. Judge Walker says they were "hospitably entertained at the Exchange Hotel." He naively adds: "During their stay five thousand dollars was drawn from the State Treasury and placed to the credit of Maj. Miller; sixteen dollars of this sum were paid by me on back bills, which were presented to me." Maj. Miller was no more definite in his statement than that he was "sure the funds were expended according to the best judgment and discretion of the commission, for the sole purpose of accomplishing the objects contemplated by the resolution of the Legislature."

In July the commissioners presented to the Auditor a requisition approved by the Governor for $4,000 more "to be used in conducting the canvass in West Florida." The Auditor declined to draw the warrant, and submitted the question of his authority to refuse to do so to the Attorney-General; pending investigation the words last quoted were stricken out of the requisition, and there were inserted in a new requisition, in their place, the following: "To defray the necessary incidental expenses incurred in conducting the negotiations." The Attorney-General, however, advised that the Auditor was without discretion, the warrant was drawn in August, and the commissioners frankly say that they used this money to influence the election.

The investigating committee were unable to procure any itemized statement, except as to Judge Walker's hack bills amounting to $16, and in their report they say: "While we do not charge the commission or any one connected with the negotiation with appropriating any of said sum for private purposes, we deem the expenditure extravagant. We are of opinion that the Legislature did not contemplate an expenditure by virtue of said joint resolution to exceed $1,200 or $1,500 and that the money drawn and expended amounting to four thousand dollars or more for the purpose of influencing an election in a neighboring State was contrary to the spirit of said resolution and wrong in principle."

Another ground of opposition to the measure was the provision therein for the endorsement of $16,000 per mile of the bonds of the Florida railroads radiating from Pensacola. The Legislature of Alabama had by an act "to amend the law establishing a system of internal improvements in the State of Alabama," approved Sep-

tember 22, 1868, provided for such an expenditure for Alabama railroads, and it is noticeable that great particularity was used in the agreement to provide that the same law should be applicable to specified Florida railroads. Between the passage of this endorsement act in September, 1868, and the meeting of the Legislature in November, 1869, Alabama railroad bonds had been endorsed to the extent of $2,600,000.

There was, perhaps, no greater or more fruitful scheme of thievery adopted by the reconstruction government in Alabama than its provisions as to railroads, and the tacking on of the endorsement law to the annexation agreement stamps it as partially, at least, a piece of jobbery.

In Florida, meanwhile, Governor Reid, in January, 1870, reported to the Legislature the result of the November election, and said that he presumed that no considerable proportion of the people of the State of Florida or their representatives would seriously entertain the idea of ceding one-fifth of the territory and population of the State and the finest harbor on the Gulf to another State, almost without consideration. It has been charged that the real ground of the Florida Governor's loss of interest and subsequent failure to promote the project was a disagreement between the persons concerned over a division of the spoils. I have discovered no proof of this charge; but the fact remains that, though the people of West Florida continued the agitation in favor of annexation, and there was, especially in the neighborhood of Pensacola, strong popular opinion in favor of the measure, no further official steps were ever taken by the Florida Government to effect that end.

In Alabama the question came up before several subsequent sessions of the Legislature, but no further ac-

tion was taken until 1873. In the session of 1870-71, a resolution favoring annexation was adopted by the House, but failed in the Senate. During the session of 1871-2, the only reference to the subject was a joint memorial from the citizens of West Florida, on which no action was taken. On March 22, 1873, Senator Wilson offered a joint resolution contemplating the annexation of West Florida to the State of Alabama by selling all that portion of her territory west of the Tombigbee River, including Mobile, to the State of Mississippi, which was read and indefinitely postponed. On the same day a joint resolution proposing a renewal of the negotiations for the annexation of West Florida to Alabama was introduced into the House and referred to a select committee, of which Samuel G. Jones was chairman, and he reported a bill which was adopted. The act was entitled "to provide for the annexation of West Florida to the State of Alabama, with the assent of the State of Florida and the Congress of the United States." It followed closely the terms of the contract of May 19, 1869; authorized the issuance of one million dollars of bonds, payable in thirty years bearing interest at eight per cent., to be paid to Florida as consideration and compensation for the cession of the soil and jurisdiction of the part of Florida described, intended to be conveyed, including the lands belonging to the State. It further provided that the Governor should appoint three commissioners on the part of Alabama to tender these bonds to the State of Florida "and to do and perform all acts and things which may be requisite and necessary to perfect and consummate the cession of the territory aforesaid"; provided, that they were limited to the amount above described, and pro-

vided, further, that upon the acceptance by the State of Florida of the tender and ratification by Congress of the act of cession, "the cession herein provided shall be complete and the bonds of the State hereinbefore mentioned shall be executed and delivered by the authorities of the State of Alabama to the State of Florida in full satisfaction and compensation of the cession of the territory aforesaid."

The vote in the House on the adoption of the bill was, yeas 49, nays 29. Mr. Manning raised the point of order that it required two-thirds of all the members of the House to pass the bill, but the speaker overruled it. When the bill came up in the Senate, Mr. Peter Hamilton of Mobile proposed to amend it by providing that the commissioners should report to the next session of the General Assembly what they had done under the act, and the same should not be binding on the State until ratified by the Legislature. This amendment was laid on the table and the bill was passed by a vote of ayes 19, noes 6. Mr. Hamilton then made the point that the bill, not having the concurrence of two-thirds of the Senate, was lost; but the president overruled the point, and announced that the bill had passed. Mr. Hamilton thereupon filed and had spread upon the record his protest, which was joined in by Senators Cooper, Cunningham and Terrell, upon the grounds (1) that as the bill provided for raising "money on the credit of this State" it could not become a law under Art. IV, Sec. 32, of the Constitution of 1868, "without the concurrence of two-thirds of the members of each House"; (2) that under Art. IV, Sec. 37, of the same Constitution, making it the duty of the General Assembly to enact laws extending to the citizens of the newly acquired territory "all the

rights and privileges which may be required by the terms of the acquisition," the Legislature must reserve to itself the exercise of this duty, and it had been undertaken by the act to confer it upon the commissioners; and (3) that the financial condition of the State did not justify the payment of the proposed price.

So far as I have been able to discover, nothing official was ever done under the act of 1873, though the subject was discussed further for several years. The Democrats under Governor Houston came into power shortly after, the Constitution of 1875 prohibited the State from lending money or its credit in aid of internal improvements, and the matter of annexation was dropped until the Chipley Convention of 1889, referred to above. The movement of 1868-73 had certain artificial aids in the concurrent railway schemes and the prevailing recklessness in spending the State's money, which will probably never exist again. It remains to be seen whether the movement of 1909-1 will take substantial shape.

Although not perhaps just now a matter of practical importance, it may not be without interest to examine some of the legal questions suggested by the contract of 1869 and the act of 1873. The constitutions of Alabama have always contemplated annexation, and impliedly, if not expressly, recognized the power of the State to contract for cessions of foreign territory. But an examination of the history of the States and the provisions of the Federal Constitution makes it clear that no such provision in our State Constitution was necessary.

At the time of the adoption of the Articles of Confederation there existed disputes as to the boundaries between eleven of the States. These arose, for the most

part, out of the conflicting terms of grants made by the British crown to the various colonies. For the purpose of settling these, it was provided by Article IX, Sec. 2, that "the United States in Congress assembled shall * * * be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever"; and particular provision was made for the appointment of commissioners to conduct the negotiations. In Article VI, Section 2, it was further provided: "No two or more States shall enter into any treaty, confederation, or alliance whatever between them without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into and how long it shall continue."

There was no national judiciary provided for in the Articles of Confederation, but when the Constitution of the United States was adopted it provided a federal judiciary and contained a provision in Art. III, Sec. 2, as follows: "The judicial power shall extend * * * to controversies between two or more States." Under this clause in the Constitution, the Supreme Court of the United States has determined a great many boundary disputes, and has had occasion to expound the law relating to boundaries.

It is recognized in international law, as one of the attributes of sovereignty, that a nation has power to contract with other nations and to cede territory. The Constitution of the United States is a grant of power from the people of the States in convention assembled, and except in so far as powers which the separate States

would have as sovereignties are restricted, or are expressly or by necessary implication granted to the Federal Government, the States retain all powers which they would have had as independent members of the family of nations By Article I, Section 10, Clause 3, of the Federal Constitution, it is provided: "No State shall, without the consent of Congress * * * enter into any agreement or compact with another State." With the exception of this limitation, the States retain the full power which they would have had as independent nations to contract with each other in reference to territory and to cede parts of their territory to another. Under the original jurisdiction which the Supreme Court has under the Constitution over "controversies between States," the usual course of procedure, where boundaries are in dispute, is for one State to file a bill in equity against the other for determination of the dispute. There has been a large variety of these cases, but nearly all of them have been where there has been a dispute in reference to boundary as to which the States concerned could not agree. In several, however, the question has turned upon the validity of a contract and negotiations between the States. In these cases the Supreme Court has taken occasion to interpret clause 3 of Sec. 10, Art. I, of the Constitution.

In *Poole* v. *Fleeger*, 11 Peters 185, decided in 1837, the question came up collaterally. Kentucky and Tennessee had by a compact made in 1820, which was assented to by Congress, settled a dispute as to their boundaries, and Story, J., said: "It cannot be doubted that it is a part of the general right of sovereignty belonging to independent nations to establish and fix the disputed

boundaries between their respective territories. * * * It is a right equally belonging to the States of this Union, unless it has been surrendered under the Constitution of the United States. So far from there being any pretense of such a general surrender of the right, that it is expressly recognized by the Constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress. The Constitution declares that 'no State shall, without the consent of Congress, enter into any agreement or compact with another State'; thus plainly admitting that, with such consent, it might be done."

In *Rhode Island* v. *Massachusetts*, 12 Peters 725, decided the following year, referring to the same clause of the Constitution, Baldwin, J., says: "By this surrender of the power, which before the adoption of the Constitution was vested in every State of settling these contested boundaries, as in the plenitude of their sovereignty they might, they could settle them neither by war, or, in peace, by treaty, compact, or agreement, without the permission of the new legislative power which the States brought into existence by their respective and several grants in conventions of the people. If Congress consented, then the States were in this respect restored to their original inherent sovereignty; such consent being the sole limitation imposed by the Constitution, when given, left the States as they were before, * * * whereby their compacts became of binding force, and finally settled the boundary between them, operating with the same effect as a treaty between sovereign powers. * * * In looking to the practical construction of this clause of the Constitution relating to agreements and compacts by the States, in sub-

mitting those which relate to boundaries to Congress for its consent, its giving its consent, and the action of this court upon them, it is most manifest that by universal consent and action, the words agreement and compact are construed to include those which relate to boundary; yet that word, boundary, is not used. No one has ever imagined that compacts of boundary were excluded because not expressly named; on the contrary, they are held by the States, Congress, and this court, to be included by necessary implication, the evident consequence resulting from their known object, subject-matter, the context, and historical reference to the state of the times and country. No such exception has been thought of, as it would render the clause a perfect nullity for all practical purposes, especially the one evidently intended by the Constitution, in giving to Congress the power of dissenting to such compacts. Not to prevent the States from settling their own boundaries, so far as merely affected their relations to each other, but to guard against the derangement of their federal relations with the other States of the Union and the Federal Government which might be injuriously affected if the contracting States might act upon their boundaries at their pleasure. * * * Bound hand and foot by the prohibitions of the Constitution, a complaining State can neither treat, agree or fight with its adversary without the consent of Congress; a resort to the judicial power is the only means left for legally adjusting or persuading a State which has posession of disputed territory to enter into an agreement or compact relating to a controverted boundary. * * * There can be but two tribunals under the Constitution who can act on the boundaries of States, the legisla-

tive or the judicial power; the former is limited in express terms to assent or dissent where a compact or agreement is referred to them by the States, and as the latter can be exercised only by this court when a State is a party, the power is here, or it cannot exist."

In the recent case of *United States* v. *Texas*, 143 U. S. 621, the court, referring to boundary disputes which existed at the time of the adoption of the Constitution, say: "The necessity for the creation of some tribunal for the settlement of these and like controversies that might arise, under the new government to be formed, must, therefore, have been perceived by the framers of the Constitution, and, consequently, among the controversies to which the judicial power of the United States was extended by the Constitution we find those between two or more States. And that a controversy between two or more States in respect to boundary is one to which, under the Constitution, such judicial power extends, is no longer an open question in this court."

So in *Virginia* v. *West Virginia*, 11 Wall. 39, Miller, J., says: "We consider, therefore, the established doctrine of this court to be, that it has jurisdiction of questions of boundary between two States of this Union, and that this jurisdiction is not defeated, because in deciding that question it becomes necessary to examine into and construe compacts or agreements between those States, or because the decree which the court may render, affects the territorial limits of the political jurisdiction and sovereignty of the States which are parties to the proceeding."

In the last case cited, and also in the case of *Virginia* v. *Tennessee*, 148 U. S. 503, in both of which there was an express compact between the contracting States

in reference to boundary, it was held that such consent need not be express, but might be implied. In the *Tennessee* case Congress provided for federal appointments of officials, elections were held under its authority, taxes were laid and revenues collected up to the line agreed upon. The court say such use of the territory on different sides of the boundary designated in a single instance would not, perhaps, be considered as absolute proof of the consent of Congress, but such exercise of jurisdiction and long acquiescence therein is conclusive proof of assent. In the *West Virginia* case, where a statute of Virginia provided that elections might be held in the counties to determine whether they should be annexed to West Virginia, which had theretofore been established, and the Governor of Virginia should ascertain and certify the result to the Governor of West Virginia, it was held that the ascertainment and certification by the Governor of Virginia to the Governor of West Virginia was conclusive, and Congress, having given its consent, it could not be gone behind and investigated; and that a subsequent statute of Virginia, repealing the act of the Virginia Legislature under which the election was held, was without effect, as the cession was then a completed transaction.

It is evident, therefore, that any State of the United States may cede a part of its territory to another State, provided — and provided only—that Congress gives its assent thereto. Under the accepted doctrine in Alabama the power on the part of this State to enter into such an agreement rests in the legislative department, because there is not in our State Constitution a limitation upon the exercise of such power by the Legislature. It is also clear from the foregoing that if an agree-

ment of cession by one State of a part of its territory to another State is entered into and such an agreement assented to by Congress, the Constitution provides a tribunal, namely, the Supreme Court of the United States, which will enforce such agreement.

It is almost axiomatic in the history of this country that the feeling in favor of State integrity is so strong that no State will ever give up any part of its territory. Even Texas, which has sufficient territory to make a dozen New England States, will never, in all probability, give up an inch of her territory voluntarily, and, while in the cases of Virginia and Tennessee, and Tennessee and Kentucky, contracts in reference to territory were entered into, they really, in both cases, were the outcome of disputes as to lines which had long previously been established. The only instance in the history of this country that I know of where any portion of the territory of one State has ever been, by express contract, without any previous boundary dispute, ceded to another, was the case of the two counties of Berkley and Jefferson, ceded by Virginia to West Virginia; and it may be fairly said that there was never an expression of the will of the people of Virginia in favor of that. When the civil war came on dual governments were erected and maintained in the State of Virginia, and the so-called Poindexter government, representing the Unionists, which was subsequently recognized by the Federal Government as being the lawful government, erected out of the territory of Virginia the new State of West Virginia, which was admitted into the Union. The statute providing for the erection of this new State, and subsequent statutes, provided that certain counties, including Berkley and Jefferson,

might, if in an election thereafter to be held, they favored it, be annexed to West Virginia. While the election in the two counties subsequently held was ascertained to be favorable to annexation by the Union Governor of Virginia, the annexation of these two counties was, in a sense, a parcel of the original movement for the erection of the separate State of West Virginia, and the election was not held at the time of the original annexation because those two counties at that time were in the control of the Confederate forces; and, further, the election subsequently held was participated in only by a small proportion of the people. Furthermore, Virginia received no consideration for the territory parted with. This has been aptly termed the "rape of Virginia," and it is notable that the only other serious movement in this country for the cession of one part of a State to another by contract occurred during reconstruction times, when aliens were, for the most part, in control of the governments in both States concerned. The West Florida movement differs from any other in that it was proposed by one State to pay another State money for a part of its territory.

The point made by Senator Hamilton on the act of 1873 under the Constitution of 1868 prohibiting the borrowing or raising of money on the credit of the State, without the concurrence of two-thirds of the members of each house, was probably sound; but there can be no doubt that under Art. XI, Sec. 3, of the present Constitution, absolutely prohibiting, after its ratification, any new debt being "created against or incurred by this State, or its authority, except to repel invasion or suppress insurrection," it would require a constitutional amendment to authorize the payment of any money or

the incurring of any obligation to pay money for West Florida. This, however, is purely a question of domestic law, which could not stand in the way if the people of the State were sufficiently anxious for annexation. It does not affect the power of the State to acquire foreign territory by cession.

If the proposition now pending in this State assumes more definite shape, the Constitutional Convention, now in session, will probably authorize an issue of bonds to use in making the purchase. A most serious obstacle, though, would probably be the amount which would be expected to be paid. As appears by the report of the Alabama commissioners, the total population of the territory concerned was, in 1867, 26,671. The population now is 99,061. As also appears by the report, there were in 1867 two million acres of land belonging to the State of Florida of the average value of $1.25 per acre, which would have been acquired by this State, in addition to the five per cent. of the proceeds of the sale of public lands, whereas now the public lands amount to much less, and are not worth more than fifty cents per acre. On the other hand, the State revenue from the district concerned in 1867 was only $31,245.92, whereas in 1899 the total taxes for State purposes were $71,792.43, and the State licenses, not included in State taxes, were $25,808.19, making a total of State revenue of $97,600.62. If these eight counties were annexed to Alabama under present conditions we should probably have to pay out of the State treasury for additional State officers the salaries of one chancellor $2,500, one circuit judge $2,500, one solicitor $2,400, making $7,400. In addition to this, on the basis of appropriations for public schools for the past year, it is probable

that about $30,000 would be assigned as the proper proportion of the territory added, and it is reasonable to suppose that there would be some increase in the expense of other public institutions, such as the deaf, dumb and blind and insane asylums, amounting to, say, $10,000. On this basis, the total expenditure by the State on account of this territory would be $47,400 a year. If taxation and licenses remained on the same basis as under the Florida laws of 1899, the return therefrom for State purposes being $97,600, there would be a net gain to the State revenue of $50,000. With this net return, and without acquiring any public lands from Florida, Alabama could easily afford to pay one million dollars, which it could probably borrow now at least at 4 per cent. The yearly interest would be $40,000, leaving $10,000 a year to go into a sinking fund. It is not within the range of probability, however, that, if the State of Florida were willing at all to part with any of its territory, it would ever again fix the price at so small an amount as one million dollars.

Pensacola has grown to be a considerable city, and the total value of the real estate, personal property, railroads and telegraphs in the counties concerned is shown by the Florida comptroller's report to have been assessed for taxes in 1899 at nearly $13,000,000. This would come to Alabama instead of the "sand-banks and gopher hills" which the editor of the Hayneville Examiner thought we were about to acquire in 1869. It is but reasonable that the price should be proportionately increased. One of the main arguments used in 1869 was that annexation was necessary in order to build up Pensacola and the iron and coal industries of central Alabama. These are now of no force, and time has

shown that the editor of the Hayneville Examiner was right in saying that Alabama iron and coal would be as much shipped through Pensacola as a Florida town as they would be if it became a part of Alabama. But, if there is a conclusive and final objection to annexation by Florida, it is the same that has always existed in the mind of every State—that it would never part, under any circumstances , or for any price, with any part of its territory because of its love for State integrity and its State pride.

That there was considerable strength behind the movement of 1868 to 1873 is beyond doubt; but the reigns of government in both Alabama and Florida were at that time in the hands of reconstructionists, and a large proportion of the people of both States, imbued with the love of their States, were disfranchised.

That annexation would be of advantage to Alabama is undoubted; it would add to the influence of the State in the Federal Government; the annexed territory would eventually bring large net tax returns to the State treasury; much material wealth and population would be added. But I do not undertake to forecast the result of the present movement, nor do I express any opinion as to whether it should succeed. I have only undertaken to give some historical facts and to discuss some legal propositions bearing on the matter.

The responsibility for the failure of the negotiations of 1868-73 rests, so far as the record shows, on Florida. Having rejected Alabama's proposition then, the opponents of annexation may say, as said the Alabama commissioners in their report to Governor Smith in 1869: "The subject had better be forever dropped, for we do not conceive that a more favorable opportunity * * * will ever be presented" than the one of 1868-73.